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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,563	08/14/2006	Wayne A Jensen	DI-13-C6-PUS	8347

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HESKA CORPORATION
LEGAL DEPARTMENT
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EXAMINER
CHEU, CHANGHWA J

ART UNIT	PAPER NUMBER
1641	

NOTIFICATION DATE	DELIVERY MODE
01/29/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/550,563	Applicant(s) JENSEN ET AL.	
	Examiner Jacob Cheu	Art Unit 1641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-37, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-37, 39-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Applicant's amendment filed on 12/5/2007 has been received and entered into record and considered.

The following information provided in the amendment affects the instant application:

1. Claims 32-33 and 38 had been cancelled.
2. Currently, claims 34-37, 39-40 are under examination.

H425 antibody (Deposit)

With respect to claims 34-37, 39-40, it is apparent that the H425 antibody is required to practice the claimed invention. As a required element, it must be known and readily available to the public or obtainable by a repeatable method set forth in the specification. If it is not so obtainable or available, the enablement requirements of 35 USC 112, first paragraph, may be satisfied by a deposit of the cell line / hybridoma which produces this antibody. See 37 CFR 1.801-1.809.

In addition to the conditions under the Budapest Treaty, applicant is required to satisfy that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent in U.S. patent applications.

Amendment of the specification to recite the date of deposit and the complete name and address of the depository is required. As an additional means for completing the record, applicant may submit a copy of the contract with the depository for deposit and maintenance of each deposit.

NOTE THE CURRENT ATCC DEPOSITORY ADDRESS

American Type Culture Collection, 10801 University Boulevard, Manassas, VA 20110-2209

Applicant is reminded that the following and should amend the specification accordingly.

The current address of the ATCC is as follows:

American Type Culture Collection, 10801 University Boulevard, Manassas, VA 20110-2209

If the original deposit is made after the effective filing date of an application for patent, the applicant should promptly submit a verified statement from a person in a position to corroborate the fact, and should state, that the biological material which is deposited is a biological material specifically identified in the application as filed, except if the person is an attorney or agent registered to practice before the Office, in which the case the statement need not be verified. See MPEP 1.804(b).

Response to Applicant's Arguments

1. With respect to the deposit issue, the mere statement "Applicant hereby *agree* to deposit with the American Type Culture Collection (ATCC), a hybridoma that produces monoclonal antibody H25" is not sufficient to satisfy the deposit rule 37 CFR 1.801-1.809 (See Remarks, page 5, first paragraph). The instant monoclonal antibody H425 is essential for practice of the claimed invention. A separate statement clearly states that "all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent in U.S. patent applications" is necessary to fulfill the requirement of deposit rule. Thus, at the present time, applicant has not satisfied the deposit requirement set forth in 37 CFR 1.801-1.809.

2. The rejections of claims 32- under 35 U.S.C. 102(e) as being anticipated by Bar-Or (US 20040175754) are withdrawn because Bar-Or et al. do not teach a specific H425 monoclonal antibody.

3. The rejections of claims 32-33, 37 under 35 U.S.C. 102(e) as being anticipated by McDonald et al. (US 20030022262) are withdrawn because McDonald et al. do not teach a specific H425 monoclonal antibody.
4. The rejections of claims 32-33 and 37 under 35 U.S.C. 103(a) as being unpatentable over Ohman et al. (US 4163778) in view of Forrest et al. (US 4659678) are withdrawn because both Ohman and Forrest et al. do not teach a specific H425 monoclonal antibody.
5. The rejections of claims 32-33 and 37 under 35 U.S.C. 103(a) as being unpatentable over Syme et al. in view of Forrest et al. are withdrawn because both Syme and Forrest et al. do not teach a specific H425 monoclonal antibody.

Request for removal of inventors

6. It is noted that Applicant also requested to correct inventorship under 37 CFR 1.18 (b)(See Remarks, page 4, Section I). However, the request has not been considered because it is required Applicant to file a separate petition for removal of inventor(s).

Allowable Subject Matter

1. Claims 34-37, 39-40 would be allowable if submitting H425 Deposit document compliance with the Deposit Rule set forth by the Office.

Conclusion

2. No claim is allowed.
3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Cheu whose telephone number is 571-272-0814. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jacob Cheu
Examiner
Art Unit 1641



LONG V. LE 01/17/03
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600